IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HECTOR CASTILLO	:	CIVIL ACTION
	:	
v.	:	
	:	
COCA-COLA BOTTLING CO.	:	
OF EASTERN GREAT LAKES	:	NO. 06-183

ORDER AND OPINION

JACOB P. HART
UNITED STATES MAGISTRATE JUDGE

DATE:

In this action, Hector Castillo has sued his former employer, Coca-Cola Enterprises Inc., d/b/a Coca-Cola Bottling Company of Great Lakes ("Coca-Cola") – apparently misnamed in the caption – under Title VII of the Civil Rights Act of 1964, and the Pennsylvania Human Relations Act ("PHRA"), for employment discrimination against him based on his national origin (he is from Spain). Castillo, a truck driver, has alleged discriminatory treatment including a demotion, drug testing, and assignment to undesirable routes.

Coca-Cola has filed a motion to dismiss the action, or, alternatively, for summary judgment based on the doctrine of judicial estoppel. For the reasons set forth below, I will deny Coca-Cola's motion, but preclude Castillo from seeking compensatory relief in this action.

I. Factual and Procedural Background

On or about March 30, 2004, Castillo filed a dual administrative complaint with the Pennsylvania Human Rights Commission "PHRA" and the EEOC, alleging employment discrimination. Complaint at ¶ 6. As part of his amended complaint, dated June 6, 2004, Castillo alleged: "The harassment was severe because I had sleeping problems due to the instability at my job and when I was demoted, I had no choice but to file bankruptcy." Exhibit A at page 3, ¶ 15.

In fact, Castillo and his wife jointly filed a petition under Chapter 7 of the Bankruptcy Code on May 4, 2004. Bankruptcy Petition, attached as Exhibit B to Motion. Thus, they filed during the period in which Castillo was preparing his amended administrative complaint. Castillo was represented by counsel in his bankruptcy. Id. at page 1. The representation must have begun on or about March 31, 2004, because, according to Castillo's statement of "payments related to debt counseling or bankruptcy," this was the date upon which he payed bankruptcy counsel $1,000. Id. at Statement of Financial Affairs, ¶ 9.

Notwithstanding this timeline, Castillo did not disclose the existence of his administrative action against Coca-Cola in his amended debtor's schedules, dated August 4, 2004. He checked off "none" in response to a request to "list all suits and administrative proceedings to which the debtor is or was a party within one year immediately preceding the filing of this bankruptcy claim." Id. at "Statement of Financial Affairs." He also checked off "none" for: "[C]ontingent and unliquidated claims of every nature." Id. at Schedule B "Personal Property."

Castillo was granted a discharge in bankruptcy on August 16, 2004. Id. at "Discharge of Debtor" Order. The Chapter 7 case was closed on September 7, 2004. Id. at "Final Decree." It does not appear that any payment was made to his creditors.

The EEOC issued a right to sue letter dated October 18, 2005. Complaint at ¶ 7 and Exhibit A. Castillo then filed a complaint in this action on January 13, 2006.

In its motion, Coca-Cola argues that Castillo should be judicially estopped from pursuing this action and the Complaint should be dismissed, because of Castillo's knowing failure to disclose his claims against Coca-Cola in his bankruptcy proceeding.

II. Legal Principles

Judicial estoppel is an equitable doctrine invoked by a court at its discretion, which precludes a party from assuming a position in a legal proceeding that contradicts or is inconsistent with a previously asserted position. Ryan Operations G.P. v. Santiam Midwest Lumber Co., 81 F.3d 355, 358 (3d Cir. 1996) and see Coast Automotive Group, Ltd. v. VW Credit, Inc., 34 Fed. Appx. 818, 822 (3d Cir. 2002). Judicial estoppel is not intended to eliminate all inconsistencies, no matter how trivial; rather, it is designed to prevent litigants from "playing fast and loose with courts." Id.

The harsh remedy of judicial estoppel may be imposed only if: (1) the party to be estopped is asserting a position that is irreconcilably inconsistent with one he or she asserted in a prior proceeding; (2) the party changed his or her position in bad faith, i.e., in a culpable manner threatening to the court's authority or integrity; and (3) the use of judicial estoppel is tailored to address the specific harm caused by the inconsistent representation. Montrose Medical Group Participating Savings Plan v. Bulger, 243 F.3d 773, 777-78 (3d Cir. 2001); Coast Automotive, at 34 Fed. Appx. 823.

A finding of bad faith must be based on more than the existence of an inconsistency. Coast, supra, citing Klein v. Stahl GMBH & Co. Maschinefabrik, 185 F.3d 98, 111 (3d Cir. 1999). A party has not acted in "bad faith" for this purpose unless it is found that (a) he behaved in a manner that is somehow culpable, i.e., to obtain an unfair advantage; and (b) his behavior was culpable vis-a-vis the court. Coast, supra, citing Ryan Operations, 81 F.3d at 362 and Montrose, at 780-781.

Nevertheless, for purposes of judicial estoppel, courts are permitted to draw a rebuttable inference of bad faith when "averments in the pleadings demonstrate both knowledge of a claim and a motive to conceal that claim in the face of an affirmative duty to disclose." Krystal Cadillac-Oldsmobile GMC Truck, Inc. v. General Motors Corp., 337 F.3d 314, 321 (3d Cir. 2003); Ortlieb v. Hudson Bank, 312 F. Supp. 3d 705, 712 (E.D. Pa. 2004); Petroski v. First Horizon Home Loans Inc., Civ. A. No. 02-8022, 2004 WL 1551736 at *3 (E. D. Pa. Jul. 9, 2004).

With regard to the third prong of the test, the Court of Appeals for the Third Circuit has said that judicial estoppel may not be invoked unless: (1) no other sanction "is up to the task of remedying the damage done by a litigant's malfeasance; and (2) judicial estoppel would address the harm identified." Montrose at 784, citing Klein, supra, at 185 F.3d 108 and 110. In other words, dismissal of an action under the doctrine of judicial estoppel is a last resort.

III. Discussion

A. Inconsistent Positions

Clearly, Castillo is asserting a position here that is irreconcilably inconsistent with his assertion in his bankruptcy proceeding that he did not have a pending claim against anyone. The doctrine of judicial estoppel frequently arises in the context of a failure to list a claim as an asset in a bankruptcy, and the inconsistent pursuit of the undisclosed claim. See, e.g., Ryan Operations, supra ; Oneida Motor Freight, Inc. v. United Jersey Bank, 848 F.2d 414 (3d Cir. 1988), cert. denied 488 U.S. 697 (1988); Ortlieb supra; Petroski, supra; Anderson v. Acme Markets, Inc., 287 B.R. 624 (E.D. Pa. 2001). Therefore, the first Montrose factor exists.

B. Bad Faith

Given the timeline here, I must infer find bad faith, under the Krystal analysis. Castillo certainly had knowledge of his claim against Coca-Cola when he filed for bankruptcy. He filed his initial paperwork for his dual complaint with the PHRA two months before he filed for bankruptcy protection, and was actually in the process of drafting a factually detailed complaint. It is also clear that Castillo had a motive to conceal his claim. If the claim were made an asset of the bankruptcy estate, any proceeds would be made available to his creditors.

As to the final component of the Krystal bad faith analysis, there is no question that Castillo was under a duty to disclose his assets in the required verified petitions. 11 U.S.C. § § 521, F. Rules. Bankr. Pr. 1007, 1008. Because both creditors and the court must rely heavily on these disclosures, a court "cannot overemphasize" the importance of the debtor's obligation to accurately represent its financial position. Ortlieb supra, at 714, citing Oneida, supra, at 848 F.2d 417 (Oneida, however, was a corporate Chapter 11 case involving additional duties under 11 U.S.C. § 1125); see also Casey v. Peco Foods, Inc., 297 B.R. 73 (Bankr. S.D. Miss. 2003), quoting In re Coastal Plains, 179 F.3d 197, 208 (5th Cir. 1999): ("The rationale for ... decisions [invoking judicial estoppel to prevent a party who failed to disclose a claim in bankruptcy proceedings from asserting that claim after emerging from bankruptcy] is that the integrity of the bankruptcy system depends on full and honest disclosure by debtors of all of their assets.") (Material in brackets in original).

Castillo has not successfully rebutted this inference of bad faith. He claims that he did not "fully understand the United States Bankruptcy Code requirements" but has not explained how, aided by counsel, he could have misunderstood a direct question as to whether he was a party in an administrative action.

Elsewhere, it has been said that "in considering judicial estoppel *for bankruptcy cases*, the debtor's failure to satisfy its statutory disclosure duty is 'inadvertent' only when, in general, the debtor either lacks knowledge of the undisclosed claims or has no motive for their concealment." In re Coastal Plains, 179 F.3d 197, 210 (5th Cir 1999). This type of inadvertence was not present here.

C. The Appropriate Remedy

There is ample Third Circuit precedent for judicial estoppel of a civil case because of the failure by a plaintiff – whether individual or corporate – to disclose his or her claim in a prior bankruptcy proceeding. Ortlieb, supra; Krystal, supra; Oneida Motor Freight, supra; In re Okan's Foods, Inc., 217 B.R. 739 (Bankr. E.D. Pa. 1998); Petroski, supra.

Although there does not appear to be a case in the Third Circuit where a court dismissed a plaintiff's Title VII case for this reason, there are at least two cases suggesting that this would be appropriate. In Anderson v. Acme Markets, Inc., 287 B.R. 624 (E.D. Pa. 2002), the District Court for the Eastern District found that a plaintiff had no standing to bring a Title VII action while her bankruptcy was pending. Because the cause of action accrued before the filing of her petition, it was an asset of the estate and could only be pursued by the bankruptcy trustee. This implies that Castillo's claim against Coca-Cola should have been part of his estate.

Moreover, in In Re Okan's Foods, Inc., supra, the Bankruptcy Court for the Eastern District of Pennsylvania judicially estopped a § 1983 claim brought by a bankrupt business entity. This decision suggests that civil rights actions are not immune from judicial estoppel in the Third Circuit. See, also, Jethroe v. Omnova Solutions, Inc., 412 F.3d 598 (5th Cir. 2005).

Nevertheless the Montrose test requires consideration of whether judicial estoppel would be the only effective remedy. In Montrose itself, the Court of Appeals for the Third Circuit held that a District Court had abused its discretion in concluding that judicial estoppel was appropriate without considering whether a lesser sanction would have sufficed. 243 F.3d at 785. See also Coast Automotive Group, supra, at 824: "In this case, the District Court applied judicial estoppel against Coast *sua sponte* and without the complete analysis required by this Court."

In this case, the trustee cannot simply be substituted for Castillo, nor can Castillo supplement his bankruptcy petition, since he was discharged two years ago. In exactly this situation, however, the Eleventh Circuit has taken a reasonable approach. It has precluded plaintiffs from recovering money damages in their previously-undisclosed civil rights actions, since that money should have been made available to creditors; however, it has permitted civil rights claims for equitable relief to go forward. Barger v. City of Cartersville, Georgia, 348 F.3d 1289 (11th Cir. 2003);Burnes v. Pemco Aeroplex, Inc. , 291 F.3d 1282 (11th Cir. 2002).

The Barger court explained:

> Barger's claim for injunctive relief (i.e., her request for reinstatement) would have added nothing of value to the bankruptcy estate, even if she properly disclosed it. Therefore, like the plaintiff-appellant in Burnes, judicial estoppel does not prohibit Barger from pursuing any claim for injunctive relief that she may have.

348 F.3d at 1297.

Given the importance of the societal issues addressed in civil rights actions, as well as this Circuit's reluctance to apply the harsh remedy of judicial estoppel, I believe the Barger approach is far preferable to dismissing Castillo's action. I will not permit him to sue Coca-Cola for compensatory damages, but he may continue to pursue equitable relief in this action. Since

salary earned during his bankruptcy would not have become part of his estate, Castillo may seek backpay, if appropriate. 11 U.S.C. § 541(a)(6). Clearly, salary earned after his discharge would have been unavailable to his creditors. Therefore, he seek frontpay as well.

IV. Conclusion

For the foregoing reason, I now enter the following:

O R D E R

AND NOW, this day of May, 2006, upon consideration of Defendant's Motion to Dismiss Or, In The Alternative, For Summary Judgment, filed in this action as Document No. 16, Plaintiff's Response thereto, and Defendant's Reply Memorandum, it is hereby

ORDERED that Defendants' Motion is DENIED; it is further

ORDERED that Castillo may not pursue compensatory damages in this action, but may purse equitable relief, and may also seek backpay and/or frontpay, if appropriate.

BY THE COURT:

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JACOB P. HART
UNITED STATES MAGISTRATE JUDGE